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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,640	03/16/2004	James F. Conway	ACIP 8890US	4917

1688 7590 10/05/2007

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EXAMINER	
LE, TAN	

ART UNIT	PAPER NUMBER
3632	

MAIL DATE	DELIVERY MODE
10/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/802,640	CONWAY JAMES	
	Examiner	Art Unit	
	Tan Le	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 July 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-3, 5, 7, 8 and 16-21* is/are pending in the application.

4a) Of the above claim(s) *9-15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,3,5,7,8 and 16-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's reply filed 7/18/07 is acknowledged. Claims 2-3, 5-8, 9-15 and 16-21 are currently pending. Claims 1, 4 and 6 have been canceled. Claims 9-15 was withdrawn. Claim 21 has been added.

Claim Objections

Claim 16 is objected to because "the display" (see "the channel receiving at least a portion of the display" (lines 5-6) is drawn into the claim while the display does not appear to be of the claimed invention (see the preamble). Claims 16-20 are considered drawn to the combination of clip and the display for examination purposes.

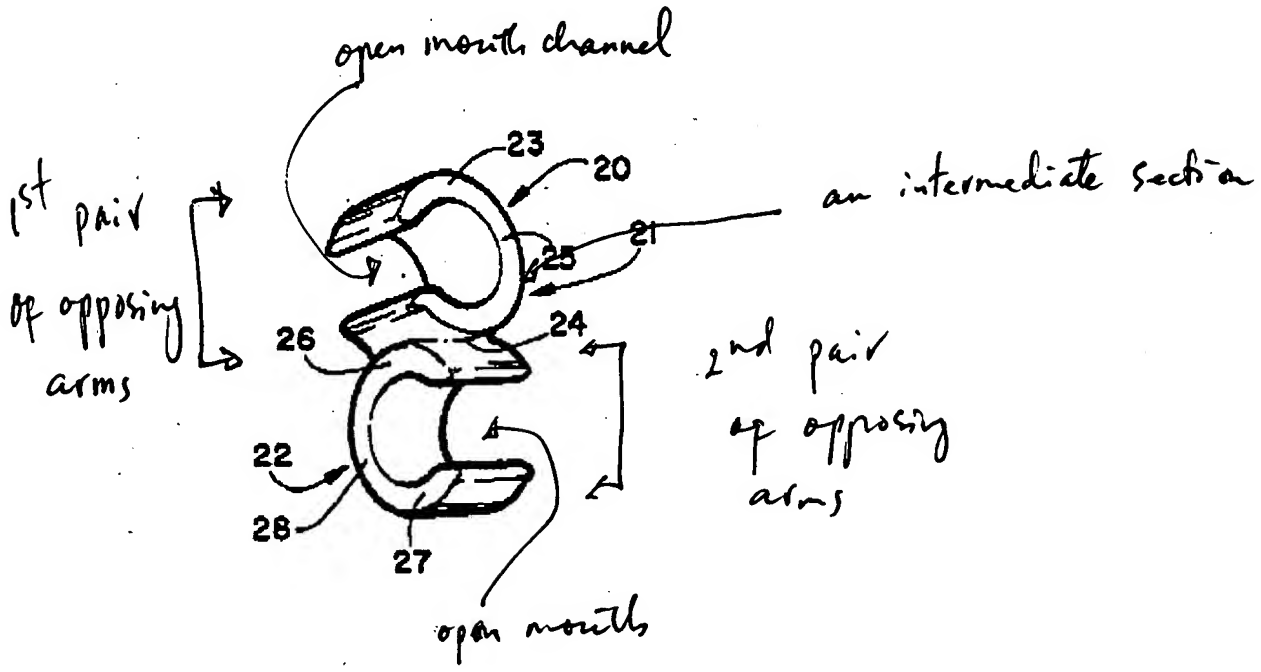
Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16, 20, 21, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent No. 5,371,991 to Bechtel et al.

As to claims16, 20, 21 and 5, Bechtel et al teaches a re-bar clamp assembly (Fig. 2) comprising all the limitations as claimed, which shows on the attached Figure 2. Note that Bechtel also teaches the open mouth channel receiving at least a portion of the display (receives steel bar 13) (Fig. 1).

As to claim 7, the material of the clip, Bechtel et al also discussed on col. 2, line 68 and col. 3, lines 1-4) as being made out of plastic.



Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-3, 17, 19, 8, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bechtel et al. in vie w of US patent No. 4,121,798 to Schumacher et al.

As to claims 2-3 and 17-19, Bechtel et al. device differs from claims 2-3, 17 and 19 of the present invention in that it is not provided with a flared outwardly at the ends of each of pair of arms.

Schumacher et al. teaches the concept of such so as to permit the pairs of opposing arms to be easily to or release from. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flare extended outwardly at the ends of each pair of the opposing arms on Bechtel et al. as taught by Schumacher et al. in order to facilitate the insertion of or removal from the elongated object to the clamp.

As to claims 8 and 18, Bechtel et al. device also differs from claims 8 and 18 of the present invention in that it is not provided with the first pair of opposing arms spaced apart from each other a first distance and the second pair of opposing arms spaced apart from each other a second distance wherein the first distance is greater than the second distance.

Schumacher et al. teaches the concept of such. Schumacher teaches the first pair of opposing arms spaced apart from each other a first distance and the second pair of opposing arms spaced apart from each other a second distance wherein the first distance is greater than the second distance so that to allow the first pair of opposing arms to hold or snap into a bigger elongated object.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide first distance being greater than the second distance on

Bechtel et al. as taught by Schumacher et al. in order to allow the first pair of opposing arms being capable of snap fit engagement with a bigger size of an elongated object.

Response to Arguments

Applicant's arguments filed 7/18/07 have been fully considered but they are not persuasive.

Applicant's generally argues "the claims have been amended to more specifically require that the channel mounts to the display while the second pair of opposed arms receive at least a portion of the display panel. None of the art of record discloses similar structure or gives a similar result. Bechtel '991, relied upon by the Examiner in the context of the original claims, discloses a re-bar clamp for use in forming concrete footings that require the reinforcing steel rods to be spaced upwardly at a predetermined height above ground so that when the concrete is poured into the footings, the reinforcing bars will be completely encapsulated by the concrete. It is respectfully suggested that it is only with the hindsight knowledge provided by Applicant's disclosure that one skilled in the art would even consider the '991 patent for any purpose related to Applicant's invention, and even with that hindsight, the '991 structure will not function for Applicant's purpose without substantial modification. But that need modification only is provided by Applicant's disclosure, and not by the art of record" (page 7). This is not found so persuasive. First, Bechtel clearly teaches the opposed arms received at least a portion of the display as state in the rejection. Since display is not defined therefore the steel bar 13 can be defined as display. Thus it meets

the claims. Second, examiner respectfully submits that anticipation law requires a distinction be made between invention described or taught, and the invention claimed. It does not require that the reference "teach" what subject matter teaches, assuming that reference is properly "prior art", it is only necessary that claims under attack, as construed by court, "read on" something disclosed in the reference. Kalman c. Kimberly-Clark Corp., 218 USPQ 781, 789 (CAFC 1983). In the instant case, Bechtel reference's clearly met all Applicants' structural limitations as recited in the claims as shown on the attached figure. With respect to the arguments that none of the art record discloses similar structure or gives similar results, the examiner also disagrees. Since all structural limitations are met by Bechtel reference. Thus Bechtel discloses similar structures and similar structures are expected to behave similar results.

Argument with 103:

With respect to Applicant's argument presented in pages 8-9, First, as stated in the argument above, the clip of Bechtel also receives a portion of the display in which the steel bar 13 is the display. In the case of "for receiving at least a portion of a display panel" as claimed in claim is merely a recitation of the intended use, thus it adds nothing the claims' patentability. Second, "merchandise display is not defined, therefore, the steel bar 13 of Bechtel reference or the mop handle 20 of Schumacher reference can be defined as "merchandise display".

In general, Applicant's arguments regarding Bechtel and Schumacher et al. are not persuasive because the test for obviousness is what the combination of reference

disclosures taken as a whole would have fairly suggested to one of ordinary skill in and not whether specific features can be bodily incorporated from one reference into another. Applicant should note that a combination of references is proper for any reason taught by the prior art and that there is no requirement that a particular reference explicitly articulate this motivation. The examiner has advanced the motivation for making the required modifications and applicant has not adequately addressed this motivation. It should also be noted that the rationale to modify does not have to be expressly stated in the prior art; rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one ordinary skill in the art. Further, there is no requirement for motivation to be explicitly stated in a reference as a reference is valid for whatever it explicitly or implicitly teaches or requirement for a secondary reference to identify which other prior art it can be combined with, and there is no requirement that applicant be "convinced" before a line of reasoning can be considered proper.

Conclusion

This action is made FINAL>

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tan le
September 26, 2007

Carl D. Friedman
Supervisory Patent Examiner
Group 3600